Supreme Court, U.S.
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No. 94-791

In The

Supreme Court of the United States

October Term, 1994

FIRST ASSEMBLY OF GOD OF NAPLES, FLORIDA, INC.,

Petitioner,

vs.

COLLIER COUNTY, a political subdivision of the State of Florida,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Collier County's prohibition of a homeless shelter on church-owned property violates the First Amendment free exercise rights of Petitioner First Assembly of God.

2. Whether the Court of Appeals' Judgment should be vacated for further proceedings in light of the Religious Freedom Restoration Act of 1993.

LIST OF PARTIES

Petitioner, First Assembly of God of Naples, Florida, is a Florida Corporation which is affiliated with the Assemblies of God of the United States and with the Peninsula of Florida District. Assemblies of God of the United States is not a parent corporation, and there are no subsidiary corporations. None of the corporations are publicly held.

Respondent, Collier County, is a political subdivision of the State of Florida.

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In The

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COLLIER COUNTY, a political subdivision of the State of Florida,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The respondent, Collier County, respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by Petitioner, First Assembly of God of Naples, Florida.

OPINIONS BELOW

The Eleventh Circuit Court of Appeals affirmed the trial

court's grant of a Motion for Summary Judgment in favor of Collier County rejecting First Assembly of God's claims that the Collier County Zoning laws violate First Assembly's constitutional rights of due process or free exercise of religion. The court's opinion is reported at 20 F.3d 419 and is reproduced in the Appendix to First Assembly's Petition for Certiorari. (App. A, 1-14).

Following issuance of the Eleventh Circuit Opinion, First Assembly moved for a rehearing or in the alternative a rehearing en banc. The Eleventh Circuit denied First Assembly's request, and modified its former reported opinion to include a footnote in which it declined to discuss the applicability of the Religious Freedom Restoration Act as the issue was never raised on appeal. The court's modified opinion is reported at 27 F.3d 526 and is reproduced in the Appendix to First Assembly's Petition for Certiorari. (App. B, 1-3).

The Orders of the United States District Court for the Middle District of Florida entering Summary Judgment in favor of Collier County and denying Petitioner's Motion for Preliminary Injunction are unpublished; however, the orders are reproduced in the Appendix to First Assembly's Petition for Certiorari. (App. D, 1-10; App. C, 1-18).

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The jurisdiction of the Eleventh Circuit Court of Appeals was invoked pursuant to 28 U.S.C. § 1291 as an appeal as a matter of right from a Final Order of the District Court granting Summary Judgment in favor of Respondent Collier County and from an Order Denying First Assembly's Motion for Preliminary Injunction.

The jurisdiction of the United States District Court for the Middle District of Florida was invoked pursuant to 28 U.S.C. §§ 1331, 1343, and 2201, 42 U.S.C. §§ 1983, 1985, and 1988, and as a cause of action arising under the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to those constitutional and statutory provisions cited by the Petitioner, Respondent submits the following to this Court:

Collier County Zoning Ordinance 82-2 (excerpts reproduced in Respondent's Appendix);

S. Rep. No. 111, 103rd Cong., 1st Sess. 103 (1993);

H.R. Rep. No. 88, 103rd Cong., 1st Sess. 103 (1993).

STATEMENT OF THE CASE

In 1982, Collier County adopted Ordinance 82-2 to establish regulations for all unincorporated areas of Collier County. (App. A, 3). As enacted, Ordinance 82-2 zones an entire residential area, and is applicable to all persons or entities who own property in said area regardless of their religious affiliation or lack thereof. (App. A, 3). Pursuant to this Ordinance, First Assembly of God's property was zoned RMF-6, which is a multi-family residential district which also permits certain community uses by "special exception." (App. C, 2). One such permissible use by special exception was use of land for a church and its "costomary accessory uses." (App. A, 3). On November 18, 1983, First Assembly of God obtained a provisicnal use permit from the Collier County Board of Zoning Appeals to operate a church on

its property. (App. C, 2-3). Thereafter, First Assembly of God constructed various buildings on its property. (Record Excerpt Ex. 3). In November of 1990, without receiving a permit or approval from the Collier County Zoning Director, First Assembly of God converted one of its buildings into a homeless shelter housing up to 28 people at one time. (Record Excerpt Ex. 1, 7).

Subsequent to the opening of the First Assembly of God homeless shelter, Collier County Enacted Ordinance 91-34 which identified a "homeless shelter" as a "group home" and provided regulations for its operations. (App. A, 11). As enacted, Ordinance 91-34 applied to all homeless shelters within Collier County Regardless of who would operate the shelter or their religious affiliation or lack thereof. (App. A, 12).

Beginning in May 1991, the Board of County Commissioners held five meetings addressing various community concerns regarding health and safety arising from loitering and vagrancy problems in the Naples community. (App. A, 4). One of the specific issues addressed at the hearings was whether First Assembly of God's use of its property for a homeless shelter constituted a zoning violation. (App. A, 4). On August 12, 1991 the Code Enforcement Board issued a written determination that First Assembly of God was in violation of certain zoning ordinances. (App. C). The County Code Enforcement Board in reviewing First Assembly of God's use of its property found that; (1) First Assembly of God did not comply with various Collier County building and zoning requirements; (2) the First Assembly of God homeless shelter did not have the minimum amount of required floor space for the number of persons it was housing; (3) First Assembly of God failed to apply for and obtain a provisional use permit for use of the property as a homeless shelter; (4) the homeless shelter was not a "customary accessory use" to a church under Ordinance 82-2 nor to the

previous provisional use granted for the property; and (5) a homeless shelter is a use which requires a separate provisional use permit in the RMF-6 district. (App. C, 6). Pursuant to the Notice of Violation, First Assembly of God was required to correct the violations by closing the shelter within three days or pay a fine of $250 per day that the shelter remained open. (App. A, 4).

On August 14, 1991, First Assembly of God filed an action for declaratory and injunctive relief alleging that Collier County Ordinance 82-2 and 91-34 violated First Assembly of God's due process and free exercise rights as guaranteed by the First and Fourteenth Amendments to the United States Constitution.[1] (Record Excerpt Ex. 2). The United States District Court for the Middle District of Florida denied Petitioner's Motion for a preliminary injunction, and thereafter entered summary judgment in favor of Collier County on all counts on March 17, 1993. (App. C, 1-18; App. D, 1-10). Petitioner, First Assembly of God appealed the District Court's ruling to the Eleventh Circuit. (Record Excerpt Ex. 9). The case was fully briefed for appeal by August 26, 1993 and oral argument was held on the matter on January 12, 1994.

On May 5, 1994, the Eleventh Circuit rendered its opinion affirming the trial court's grant of summary judgment in favor of Collier County. (App. A, 1-14). The Eleventh Circuit after carefully analyzing this Court's recent pronouncement in *Church of Lukumi Babalu Aye v. City of Hialeah*, __ U.S. __, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993), found that the Collier County Ordinances were neutral and of general applicability, and

---

1. Respondent, Collier County, will not address the validity of Petitioner's original claims that Ordinance 91-34 violates the Free Exercise Clause or that the enactment or codification of Ordinances 82-2 or 91-34 violates Petitioner's due process rights as these issues are not presented to this Court in Petitioner's Writ of Certiorari. (Petitioner's Brief, p. 6 fn. 1).

therefore need not be supported by a compelling governmental interest. Moreover, the Eleventh Circuit applied an extra element of protection by applying the Eleventh Circuit *Grosz* test. *Grosz v. City of Miami Beach, Florida*, 721 F.2d 729 (11th Cir. 1983), *cert. denied*, 469 U.S. 827 (1984). Under *Grosz*, the free exercise clause is not violated if (1) the law regulates religious conduct, not belief, (2) the law has a secular purpose and secular effect, and (3) the governmental interests outweigh religious interests. The Eleventh Circuit found that the Collier County Ordinances also passed the *Grosz* test. Contrary to Petitioner's contentions, the Eleventh Circuit's analysis of First Assembly of God's free exercise rights took 5 pages and cites to both *Church of Lukumi Babalu Aye* and *Grosz* as authority for its decision (Petitioner's Brief, pp. 5-6). Petitioner, First Assembly of God moved for a rehearing or in the alternative a rehearing en banc. Both motions were denied by the Eleventh Circuit on August 3, 1994. (App. B, 1-3). It is from this denial that First Assembly of God petitions this Court for a Writ of Certiorari.

During the pendency of First Assembly of God's appeal, Congress enacted the Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141 (1993) (App. F, 1-4) (hereinafter referred to as "RFRA" or "the Act") which became law on November 16, 1993. At no time after enactment of the law did the Petitioner supplement its appellate brief. Moreover, Petitioner never brought the recent law to the Eleventh Circuit's attention at oral argument. Petitioner did not even mention the Religious Freedom Restoration Act in moving the Eleventh Circuit for a rehearing of the case. In fact, the first mention of the possible applicability of the Religious Freedom Restoration Act to this case came in the form of a footnote by the Eleventh Circuit in which that court explicitly declined to address the applicability of the Act in light of the fact that the parties failed to raise the issue on appeal. (App. B, 2).

SUMMARY OF THE ARGUMENT

Collier County Ordinance 82-2 does not infringe upon First Assembly of God's free exercise rights. The Ordinance does not affect First Assembly of God's religious beliefs, but rather imposes neutral, generally applicable regulations on how and where a homeless shelter may be located.

Additionally, the Religious Freedom Restoration Act is not applicable in the present case as the issue was not preserved for appeal. Moreover, even if RFRA applies in the present case, then *Grosz, Yoder,* and *Sherbert* would be the controlling law in the Eleventh Circuit, and under these cases the summary judgment in favor of Collier County would be upheld.

REASONS FOR DENYING THE WRIT

I.

WHETHER COLLIER COUNTY'S PROHIBITION OF A HOMELESS SHELTER ON CHURCH-OWNED PROPERTY VIOLATES THE FIRST AMENDMENT FREE EXERCISE RIGHTS OF PETITIONER FIRST ASSEMBLY OF GOD.

Collier County enacted Ordinance 82-2 to establish comprehensive zoning regulations for unincorporated Collier County. Ordinance 82-2 applies indiscriminately to all property uses within unincorporated Collier County. That is, regardless of who may own a certain parcel of property, religious organization or not, the ordinance applies evenhandedly. As should be noted, Ordinance 82-2 is voluminous and in no way targets the religious beliefs of any groups. The Ordinance merely seeks to zone property in the interest of protecting the public health and welfare.

Petitioner claims that Collier County has violated its free exercise rights by enforcement of Ordinance 82-2 to Petitioner's property. There are two main cases which serve as precedent for this issue in the Eleventh Circuit: *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, __ U.S. __, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993) and *Grosz v. City of Miami Beach, Florida*, 721 F.2d 729, 733 (11th Cir. 1983), *cert. denied*, 469 U.S. 827 (1984). In *City of Hialeah*, the Court found that "a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. *City of Hialeah*, __ U.S. at __, 113 S. Ct. at 2226. Only if a law is not neutral and of general applicability is the government required to show a compelling state interest and that the law is narrowly tailored to meet that interest. *Id.* Additionally, the Eleventh Circuit follows the *Grosz* test which provides extra protection to religious interests beyond that provided by *City of Hialeah*. Under *Grosz*, the free exercise clause is not violated if (1) the law regulates religious conduct not belief, (2) the law has a secular purpose and secular effect, and (3) the governmental interests outweigh religious interests.

Clearly, Ordinance 82-2 meets the neutral and general applicability requirements of *City of Hilaleah*. On its face, Ordinance 82-2 is a comprehensive zoning ordinance for an entire residential area which applies evenhandedly to all properties within unincorporated Collier County. The ordinance addresses the housing of the homeless rather than any religious beliefs of First Assembly of God. Thus, Collier County need not provide a compelling interests to enforce Ordinance 82-2 against First Assembly of God.

Moreover, Ordinance 82-2 would also pass the Eleventh Circuit *Grosz* test. Proper analysis of this issue under *Grosz* requires first a determination of whether the government's action regulates religious beliefs or imposes restriction affecting

religious conduct. Religious beliefs may never be regulated by the government; however, there is no absolute prohibition against government regulation of religious conduct. *Grosz v. City of Miami Beach*, 721 F.2d 729, 733 (11th Cir. 1983), *citing*, *Braunfeld v. Brown*, 366 U.S. 599, 603 (1940). In examining Ordinance 82-2 to see if it regulates conduct rather than religious beliefs, it is apparent that the Ordinance is regulating conduct. Specifically, the Ordinance regulates the conduct of where a homeless shelter may be located. Although First Assembly of God may believe that sheltering the homeless is part of its religious tenets, such belief is not infringed upon by Ordinance 82-2. Ordinance 82-2 does not prohibit First Assembly of God from housing the homeless, it merely regulates where that housing may be located. Housing the homeless on church property clearly involves conduct, not one's belief in housing the homeless. There is nothing to suggest that First Assembly of God's religious beliefs include sheltering the homeless on a specific piece of property. Thus, the first threshold of *Grosz* is met.

The second threshold test under *Grosz* is whether the law has both a secular purpose and secular effect. If the law is based on disagreement with religious beliefs or practices, if it is aimed at impeding religion, or if its essential effect is to influence negatively the pursuit of religious activity or expression of religious belief, it will fail to meet this test. *Grosz*, 721 F.2d at 733. Any effect of the government regulation on religious belief or practice, regardless of its significance, must be only an incident of the secular effect. All homeless shelters in Collier County are subject to the same regulations and requirements whether they are sponsored by a religious or secular group. The fact that religious conduct is incidentally effected by an ordinance does not negate its effect. "Given zoning's historical function in protecting public health and welfare [citations omitted], and the incidental nature of the asserted burden on

religion, the essential effect of zoning laws is clearly secular." *Id.* As Ordinance 82-2 on its face has a secular purpose and effect, it passes the second prong of *Grosz.*

Once the two threshold tests of *Grosz* are met, the Court must balance the competing interests of the governmental entity and religious entity. The balancing test consists of weighing "the costs to the government to alter its activity to allow the religious practice to continue unimpeded versus the cost to the religious interest imposed by the government activity." *Grosz,* 721 F.2d at 734. In the present case, the granting of a religious exception to Ordinance 82-2 would destroy the integrity of Collier County's zoning laws and their application. There is a "total inconsistency between the accomplishment of the City's policy objectives" in preserving its coherent land use plan and allowing a religious based exemption from general zoning laws. 721 F.2d at 738. "Granting an exception would defeat City zoning policy in all neighborhoods where that exception was asserted. . . . [It] would clearly and substantially impair the City's policy objectives." *Id.,* at 739. On the other hand, there is no significant cost to First Assembly of God since they can relocate their homeless shelter to a properly zoned area.

As Ordinance 82-2 is facially valid under both *City of Hialeah* and *Grosz,* the next inquiry is whether Collier County's action in enforcing Ordinance 82-2 against First Assembly of God violated the Free Exercise Clause of the First Amendment by targeting religious conduct for distinctive treatment, thus creating religious gerrymandering. *See City of Hialeah, supra.* In other words the Court must look to the object of the ordinances. In this case, clearly the purpose of Ordinance 82-2 was not to "target" First Assembly of God and its homeless shelter. Collier County cited First Assembly of God for zoning violations due to the fact that it was not properly zoned for a homeless shelter. The decision was not made in any way to say what is or is not a proper

religious belief or conduct. Any time there is alleged non-compliance with an ordinance, a governmental enti'y is required to investigate the action, decide if the alleged action occurred, and initiate action to correct such violation. Without such action, ordinances could never be enforced. The fact that First Assembly of God is a religious organization should not exempt it from general laws which all other persons and entities must obey. To hold that First Assembly of God does not have to obey neutral zoning laws of general applicability would emasculate government's power to zone for the health, welfare, and safety of the general public, a basic power, long since granted to local government, and recognized as protecting a basic governmental interest. *See Schad v. Borough of Mt. Ephraim,* 452 U.S. 61 (1981) and *Grosz, supra.*

II.

WHETHER THE COURT OF APPEALS' JUDGMENT SHOULD BE VACATED FOR FURTHER PROCEEDINGS IN LIGHT OF THE RELIGIOUS FREEDOM RESTORATION ACT OF 1993.

A. This Court Should Deny the Petition Insofar as Review Is Sought Based Upon the Religious Freedom Restoration Act (RFRA) Because the Applicability of the Act Was Neither Presented to Nor Considered by the Courts Below.

In its Petition for Writ of Certiorari, Petitioner for the first time raises the issue of the applicability of the Religious Freedom Restoration Act to the present case. This issue was never presented nor considered in either the United States District Court for the Middle District of Florida or the Eleventh Circuit. In fact, the Eleventh Circuit explicitly declined to discuss the issue as it had not been raised by either party.

The Religious Freedom Restoration Act was enacted into law on November 16, 1993. At that point in time, the presented case was already on appeal to the Eleventh Circuit; however, oral argument had not taken place nor had any decision been rendered by the Court of Appeals. At the time of its enactment, Petitioner could have easily supplemented its brief with the new authority pursuant to Federal Rule of Appellate Procedure 28(j). Moreover, Petitioner could have brought the new law to the court's attention at oral argument. The Petitioner could have even supplemented its brief after oral argument but before a decision to bring the new law to the court's attention pursuant to Federal Rule of Appellate Procedure 28(j). Yet again, Petitioner could have raised the new issue in his Motion for Rehearing or in the Alternative Rehearing En Banc. The fact remains, Petitioner never raised the issue of the applicability of the Religious Freedom Restoration Act at any time in the lower courts.

In general, federal courts of appeal will not consider issues not passed on by the lower court. In *Singleton v. Wulff,* 428 U.S. 106 (1976), this Court elaborated on this general rule:

> [T]his is "essential in order that parties may have the opportunity to offer all the evidence that they believe relevant to the issues . . . [and] in order that litigants may not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence." We have no idea what evidence, if any, [the opposing party] would, or could, offer. . . , but this is only because [it] has had no opportunity to proffer such evidence. Moreover, even assuming that there is no such evidence, [the opposing party] should have the opportunity to present whatever legal arguments he may

> have. . . . 428 U.S. at 120, quoting *Hormel v. Helvering*, 312 U.S. 552, 556 (1941).

As the issue of the applicability of the Religious Freedom Restoration Act to the present case was never raised below, and the Court of Appeals has previously explicitly denied consideration of the issue, this Court should deny the Petition to the extent it is based on RFRA.

B. Application of the Religious Freedom Restoration Act (RFRA) Would Not Alter the Eleventh Circuit Ruling.

Petitioner argues that due to the passage of RFRA in 1993, Collier County Zoning Ordinance 82-2 should automatically be subject to the compelling governmental interest test. While Petitioner would lead this Court to believe that RFRA sets forth a cut and dried standard, application of the free exercise clause is full of unanswered questions and ambiguities, and is frequently accomplished on an ad hoc basis. *Grosz*, 721 F.2d at 729.

In support of the notion that the compelling governmental interest test is applicable to the present case, Petitioner cites only a portion of the Act in its Petition for Writ of Certiorari. Petitioner fails to cite that the state purpose behind RFRA was to overturn the 1990 United States Supreme Court decision in *Employment Division, Department of Human Resources of Oregon v. Smith* and restore the precedent of federal court rulings prior to *Smith:*

> SEC. 2 CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES.
>
> (a) FINDINGS. — The Congress finds that —
>
> * * *

(4) in *Employment Division v. Smith*, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral towards religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) PURPOSES. — Purposes of this Act are —

(1) To restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where the free exercise of religion is substantially burdened; and

* * *

Further insight into the purpose and intended effect of RFRA is provided in the Senate and House Reports accompanying the legislation. S.R. No. 103-111, H.R. No. 103-1308. In these reports, both the House and the Senate cite to Justice O'Connor's concurrence in *Employment Division v. Smith* for its review of the free exercise standard applied in prior cases to describe the purpose and effect of the enactment of RFRA. The RFRA was not intended to discard all existing case law except *Sherbert* and *Yoder*. As stated in § 2(a)(5), Congress specifically found that the compelling interest test as applied by the federal courts prior to

Smith was a workable test which provided a "sensible balance." Thus, the purpose of the Act was to restore the free exercise standard as set forth in federal case law preceding the *Smith* decision.

While it is true that *Grosz* was decided prior to the passage of RFRA, it is also true that it was decided seven years before the compelling interest test was eliminated in *Smith*. In other words, *Grosz* was decided under the very precedents which the RFRA restored. In fact, *Grosz* carefully applied the *Sherbert* and *Yoder* principles to the facts of the zoning case before that court — facts which are closely analogous to the facts before this Court. Thus, *Grosz* did not deviate from the principles established in RFRA.

Both the United States District Court for the Middle District of Florida and the Eleventh Circuit found under the *Grosz* test that Collier County Ordinance 82-2 survived free exercise scrutiny. As *Grosz* was decided prior to *Smith,* and as *Grosz* relied on the precedents which RFRA has sought to restore, the *Grosz* opinion is unaffected by the recent enactment of the Religious Freedom Restoration Act, and the District Court's decision would likely be affirmed under the Act.

CONCLUSION

Collier County prays that this Court deny First Assembly of God's Petition for Writ of Certiorari, because the case presents no issue appropriate for the Court's review, and because the lower courts' holdings were not in error.

Respectfully submitted,

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APPENDIX A — EXCERPTS OF COLLIER COUNTY ZONING ORDINANCE NO. 82-2

ORDINANCE NO. 82-2

AN ORDINANCE ENACTING AND ESTABLISHING ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF COLLIER COUNTY, FLORIDA; DIVIDING THE UNINCORPORATED AREA OF THE COUNTY INTO DISTRICTS AND ESTABLISHING THE BOUNDARIES THEREOF AND WITHIN SUCH DISTRICTS REGULATING AND RESTRICTING THE ERECTION, CONSTRUCTION, RECONSTRUCTION, ALTERATION, REPAIR OR USE OF BUILDINGS, STRUCTURES, OR LAND OR WATER; REGULATING AND RESTRICTING THE HEIGHT, NUMBER OF STORIES AND SIZE OF BUILDINGS AND OTHER STRUCTURES; REGULATING AND RESTRICTING THE PERCENTAGE OF LOTS THAT MAY BE OCCUPIED; REGULATING AND RESTRICTING THE SIZE OF YARDS AND OTHER OPEN SPACES; REGULATING AND RESTRICTING THE DENSITY OF RESIDENTIAL DWELLING UNITS; REGULATING AND RESTRICTING THE LOCATION AND USE OF BUILDINGS, STRUCTURES, AND LAND AND WATER FOR TRADE, COMMERCE, INDUSTRY, RESIDENCE, RECREATION AND OTHER PURPOSES; PROVIDING FOR THE

Appendix A

ADMINISTRATION, ENFORCEMENT, AND AMENDMENT OF THIS ZONING ORDINANCE; ESTABLISHING AND SETTING OUT THE POWERS, RESPONSIBILITIES, AND DUTIES OF THE PLANNING COMMISSION UNDER THIS ORDINANCE; ESTABLISHING AND SETTING OUT THE POWERS, RESPONSIBILITIES AND DUTIES OF THE BOARD OF ZONING APPEALS UNDER THIS ORDINANCE; SETTING A SCHEDULE OF FEES, CHARGES AND EXPENSES UNDER THIS ORDINANCE; DECLARING THAT THE PROVISIONS OF THIS ORDINANCE ARE MINIMUM OR MAXIMUM REQUIREMENTS AS THE CASE MAY BE; SETTING ENALTIES FOR VIOLATION OF THIS ZONING ORDINANCE AND AUTHORIZING RESORT TO OTHER REMEDIES TO PREVENT OR ABATE VIOLATION; PROVIDING THAT PROSECUTIONS BEGUN UNDER PREVIOUSLY EFFECTIVE ZONING REGULATIONS MAY BE CONTINUED; DEFINING CERTAIN TERMS HEREIN USED; PROVIDING THAT THESE ZONING REGULATIONS SHALL SUPERSEDE ANY AND ALL PREVIOUS ZONING REGULATIONS, RESOLUTIONS, OR ORDINANCES, REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Appendix A

WHEREAS, Article VIII, Section 1(f) of the Constitution of Florida confers on counties broad ordinance-making power when not inconsistent with general or special law; and

WHEREAS, Chapter 125.01, *Florida Statutes*, confers on all counties in Florida general powers of government, including the ordinance-making power and the power to plan and regulate the use of land and water; and

WHEREAS, the Legislature of the State of Florida has recognized the geographic, demographic and economic differences between the populous, urban coastal area of Collier County, and the relatively sparsely populated, rural agriculture oriented eastern area of Collier County by enacting Chapter 67-1246, Special Acts, Laws of Florida, 1967, which recognizes these differences by authorizing the formation of multiple planning commissions and districts, and the adoption of a Comprehensive Plan zoning regulations for each district or for the County as a whole; and

WHEREAS, the Board of County Commissioners of Collier County, Florida, and its recommendatory agents did take action in the manner prescribed by law, and did on May 8, 1979, adopt a Comprehensive Plan for Collier County; and

WHEREAS, the Collier County Planning Agency has reviewed this zoning ordinance and found it to be in compliance with the Comprehensive Plan; and

WHEREAS, the Board of County Commissioners of Collier County, Florida, find it necessary to adopt and enforce comprehensive zoning regulations for those unincorporated lands and waters subject to the jurisdiction of the County, to the

end that the public health, safety, comfort, order, appearance, convenience, morals, and the general welfare will be served; and

WHEREAS, the Board of County Commissioners of Collier County, Florida, and its recommendatory agents have conformed to all applicable procedural requirements of Florida law, and particularly those requirements relating to public notice and hearing; and

WHEREAS, all applicable substantive requirements of the law have been met;

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Collier County, Florida;

SECTION 1. SHORT TITLE:

This ordinance shall be known and cited as the "Collier County Zoning Ordinance".

SECTION 2. INTENT AND PURPOSE:

2.1 It is the intent and purpose of this ordinance to establish and adopt comprehensive zoning regulations governing the use of land and water in the unincorporated areas of Collier County, Florida. The regulations set out are based on a comprehensive plan for future development, and are enacted to protect, promote, and improve the public health, safety, comfort, order, appearance, convenience, morals and general welfare of the residents of the County.

2.2 It is intended by this ordinance to accomplish and to provide for efficiency and economy in the process of

future development and redevelopment; appropriate use of land; preservation, protection, conservation, and development of the natural resources of land, water and air; convenience in circulation of traffic for the transport of people, goods, and commodities, protection of persons and property in floodways and flood plains; healthful and convenient destruction of population; adequate and continuously maintained public facilities and utilities; promotion of amenities, both public and private, to maintain and improve the quality of life for all residents; and development in accord with the Comprehensive Plan.